IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 326 of 2005 (S/B)

Kamal Kumar Srivastava S/o Shri Mata Sharan,
Presently posted as Lecturer (Mechanical Engineering)
Govt. Polytechnic, Nainital, Uttaranchal
R/o Gray Land, Polytechnic Staff Colony,
Mallital, Nainital, Uttaranchal ..... Petitioner

Versus

1. State of Uttaranchal
   through secretary Technical Education,
   Govt. Of Uttaranchal,
   Secretariat, Dehradun, Uttaranchal
2. Secretary, Personnel (Karmik),
   Govt. of Uttaranchal, Secretariat,
   Dehradun, Uttaranchal
3. Director, Technical Education,
   Uttaranchal, Camp Office Dehradun,
4. Sarvesh Kumar Verma s/o Shri Rajendra Prasad Verma,
   Presently posted as Head, Mechanical Engineering,
   Govt. Polytechnic, Kashipur,
   District Udham Singh Nagar,
   Uttaranchal …… Respondents

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Sri S. Dhulia, Senior Counsel with Sri Vipul Sharma,Advocate for the petitioner.
Sri N.C. Gupta, Standing Counsel for respondents no. 1 to 3.
Sri B.P. Nautiyal for respondent no.4.

JUDGMENT

Coram: Hon'ble Rajeev Gupta, C.J.
Hon'ble J.C.S. Rawat, J.

RAJEEV GUPTA, C. J. (Oral)

Sri Sudhanshu Dhulia, Senior Counsel with Sri Vipul Sharma, Advocate for the petitioner.

Sri N.C. Gupta, Standing Counsel for respondents no. 1 to 3.

Sri B.P. Nautiyal for respondent no. 4.

2. Sri B.P. Nautiyal, the learned counsel for respondent no.4 has raised a preliminary objection about the maintainability of the writ petition on the ground that the petitioner has an alternative efficacious remedy of approaching the Public Service Tribunal for the reliefs sought by the petitioner in this writ petition.

3. The petitioner has filed this writ petition for the following relief:

> "1. A writ, order or direction in the nature of certiorari quashing order No. 901/XXIV(8)/2005-44/2005 dated 28.11.2005 passed by respondent no.1 (contained in Annexure 10).
> 2. A writ, order or direction in the nature of mandamus commanding the respondent no. 1 to promote the petitioner to the post of Head (Mechanical Engineering).
> 3. A writ, order or direction in the nature of quo warranto permanently restraining respondents no. 4 to function as Head Department of Mechanical Engineering Govt. Polytechnic, Kashipur, District Udham Singh Nagar.
> 4. Any other writ, order or direction which this Hon'ble Court may deem fit and proper under the facts and circumstances of the case.
> 5. Award cost of the petition to the petitioner."

4. Sri Nautiyal, the learned counsel for respondent no.4 submits that another writ petition- Writ Petition No. 85 of 2006 (S/B) impugning the same order dated 28.11.2005, which is impugned in this writ petition was dismissed by a Division Bench of this Court vide judgment dated 28.08.2006 holding that the petitioner in that writ petition had an alternative efficacious remedy of approaching Public Service Tribunal .

5. Sri Dhulia, the learned Senior Counsel for the petitioner could not demonstrate as to how the reliefs sought by the petitioner in this writ petition cannot be considered and granted by the Public Service Tribunal.

6. In Writ Petition No. 85 of 2006 (S/B), the petitioner sought the following reliefs:

> "I. Issue a writ, order or direction in the nature of certiorari quashing the impugned order no. 903/XXIV (8)/2005-44/2005 dated 28.11.2005 passed by the respondent no. 1 annexed as Annexure No. 4 to the writ petition.
> II. Issue a writ, order or direction in the nature of mandamus commanding the respondents to consider the promotion of the petitioner on the post of Head

of Department Computer fixing the seniority above respondent no. 5.

III. Issue a writ, order or direction which this Hon'ble Court may deem fit and proper under the circumstances of the case.

IV. Award the cost of the petition."

7. Writ Petition No. 85 of 2006(S/B) was dismissed on 28.082006 with the following observation in paras 4 to 6:

> 4. The petitioner, in substances, is seeking quashing of the impugned order dated 28.11.2005 (Annexure No. 4) passed by respondent no. 1 whereby respondent no. 4 – Ramesh Chandra has been promoted on the post of Head of Department, Computers.
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> 5. Sri Sharma, the learned counsel for the petitioner, could not demonstrate as to why the relief sought by the petitioner in regard to the quashing of the impugned order (Annexure No. 4) cannot be granted by the 'Public Service Tribunal'.
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> 6. As the petitioner has an alternative efficacious remedy of approaching the Public service Tribunal, we decline to exercise our discretionary jurisdiction under Article 226 of the Constitution of India.

8. With a view to avoid the passing of conflicting orders about the legality of the impugned order dated 28.11.2005 – one by this Court in this writ petition and the other by the Public Service Tribunal in the petition filed by the petitioner of Writ Petition No. 85 of 2006 (S/B), we are of the opinion, that the petitioner should first approach the Public Service Tribunal.

9. In this view of the matter, we hold that the writ petition is not maintainable as the petitioner has an alternative efficacious remedy of approaching the Public Service Tribunal. We hold so inspite of the fact that the writ petition was admitted for hearing vide order dated 04.03.2006 with a view to avoid passing of conflicting orders as mentioned above.

10. The writ petition, therefore, is dismissed as not maintainable with the liberty to petitioner to approach the Public Service Tribunal

for the redressal of the grievances projected in the writ petition and to seek condonation of delay, if any, on the ground that the petitioner was prosecuting the writ petition under *bond fide belief.*

(J.C.S. Rawat, J.) **(Rajeev Gupta, C.J.)**
12.12.2006 12.12.2006

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